

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE CARDENAS SOSA,

Defendant and Appellant.

G056311

(Super. Ct. No. 98NF2525)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Kazuharu Makino, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

This is an unusual case. Appellant has already been to this court once in his fight to have his sentence reduced under the rubrics of Proposition 47 (codified as it applies to this case as Penal Code Section 1170.18 (Section 1170.18)). He was successful on that occasion, but it was only a battle, and we must today hold that he has lost the war.

Twenty years ago, appellant pleaded guilty to a violation of possession of a controlled substance for sale (Health & Saf. Code, § 11351). He was placed on probation, but later offenses ultimately resulted in his incarceration in a federal facility. In 2015, he petitioned for resentencing under Section 1170.18; his request was denied, and he appealed. Through a series of misadventures ultimately attributable to administrative error in the superior court and the fact he was in federal custody, his appeal was not timely filed. He sought a writ in this court, and it was granted. We ordered his appeal filed.

The appeal was filed in 2016, and we appointed counsel to represent him on it. Counsel filed a brief which set forth the procedural facts of the case (the facts of the crime itself are irrelevant because the argument is solely directed at appellant's plea and the application to it of Section 1170.18). Counsel did not argue against his client, but advised us he could find no issues to argue on appellant's behalf. Appellant was invited to express his own objections to the proceedings against him, and has done so. We have considered that document and have also scoured the record for any other mistakes, as we are required to do when appellate counsel reports an inability to find an appellate issue. (*People v. Wende* (1979) 25 Cal.3d 436.) It should be emphasized that our search was not for issues upon which appellant *would* prevail, but only issues upon which he *might possibly* prevail.

We have examined the record and found no arguable issue. Appellant has fought long and hard under the misconception that his conviction for possession for sale could be reduced to a misdemeanor under Section 1170.18. But it cannot be. The statute

does not provide any possible relief for anyone convicted of that crime. It is not one of the enumerated offenses for which relief can be sought. “Health and Safety Code section 11351 . . . was not amended by Proposition 47 and, as we shall explain, is not one of the offenses subject to recall and resentencing or designation as a misdemeanor under Proposition 47 and section 1170.18.” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1093, fn. 1.)

There is only one issue in appellant’s argument, encapsulated in his conclusion, “Wherefore, Defendant/Appellant pray that, his Memorandum Brief is Granted his Prior-Conviction of Section 11351 Shall Be Considered a MISDEMEANORS California’s Proposition 47, California Penal Code § 1170.18.” That issue is foreclosed because the statute he relies upon has no application to the section for which he was convicted. Had he been convicted of Health and Safety Code section 11350, he would have had a cognizable claim. But he was not.

We have been unable to find any other issues that might be argued in his behalf. The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

IKOLA, J.

GOETHALS, J.